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The Dignity of Nature: Ethical Analysis of International Environmental Law and Environmental Human Rights

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Abstract

This research examines the ethical implications in the international tools for protecting the environment, namely International Environmental Law and Human Rights Law. This is important because the cultural and moral beliefs are the pillars of all human constructions. As such, they are important for the understanding of the underlying logic of our international systems which are supposed to protect the environment.

By using environmental ethics as a basis, the research analyse the structure and language of documents from both International Environmental law and Human Rights Law. Furthermore, it exemplifies its findings with relevant case studies and case law. It argues for a systematic change in the international legal systems, concerning the moral perception of nature.

***Keywords**: Environmental ethics, International Environmental Law, Environmental Rights, anthropocentrism, Critical Environmental Law, Rights of Nature*

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Abbreviations

ECHR – European Convention on Human Rights

ECtHR – European Court of Human Rights

IACHR - Inter-American Commission on Human Rights

IACtHR - Inter-American Court of Human Rights

IEL – International Environmental Law

MDG – Millennium Development Goal

RoN – Rights of Nature

SDG – Sustainable Development Goal

UN – United Nations

UNCHE – United Nations Stockholm Conference on the Human Environment

Global Campus Europe

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Chapter 1: Introduction

On the 26th of July 2022, a resolution of the United Nations General Assembly officially declared that the Right to a Clean, Healthy and Sustainable Environmental is a universal Human Right. It also re-affirmed that environmental degradation, climate change, biodiversity loss and desertification, as well as unsustainable development pose some of the most serious threats to humanity (United Nations General Assembly, 2022) The resolution calls upon States, international organizations, business and all other relevant stakeholders to cooperate in the efforts to promote this right.

While this is a historic moment and an important recognition, environmental degradation has been one of the most urgent topics for decades. It has been circling around all human spheres like the academic, the political and the legal. Furthermore, even though some environmental issues have been solved for the moment, it is undeniable that there is an overwhelming number of challenges that our current systems are not managing to handle. The even trickier part is that there are polarizing discussions on whose responsibility, whose fault as well as whose interests should be protected in the global fight for environmental protection.

The systems of International Environmental Law and Human Rights Law partly provide the platform and language necessary for solving these important issues; however, those systems have proven to be imperfect and not fast enough in their development to accommodate the urgency that has been scientifically shown as necessary for the survival of humans, other species, and ecosystems as a whole. Part of the issue with these systems is that they are often criticized for being too representative of one-sided ideologies that do not have the primary goal to genuinely protect the environment (Adami, 2013; Dupuy & Viñuales, 2018). Even though they express the need to protect nature, it seems like the underlying interest does not lie there. Rather, it lies in endless economic development and an idea of sustainability that is focused not on the needs of nature but prolonged exploitation of nature for production. This phenomenon can be better understood when we take into consideration the values and the morals embedded in the documents that are discussed further in the thesis.

On another note, studies done on the values and beliefs of people when it comes to their support for environmentally consequential decisions show that humanistic and biospheric altruism are positively related to pro-environmental action, while self-interest is negatively related (Almiron & Tafalla, 2019). This shows that it is important to discuss those and to provide accurate information

that would help people make educated decisions. The language of environmental ethics provides the tools to understand, analyze, critique the values and beliefs of not only individuals but also of the international treaties and documents that are supposed to represent our interests globally. After all, each international environment law document is written and conceptualized by humans, and as such it carries their cultural beliefs, ideologies and interests. This research aims at better understanding those by analyzing the language and rhetoric used. In addition, as the environmental situation gets worse and worse every year, some of these ideas and interests age at a brisk rate and need to constantly be re-negotiated. Moreover, in a time of a global crisis, there is a strong need for better understanding, knowledge and involvement in the reality of international law. This is a hypothesis that will keep re-appearing as an idea throughout the research, which also aims to expose how important broader involvement in environmental decisions, law-making and policymaking is.

We live in a time where so many people do not believe in climate change or believe that they cannot help in any way and feel hopeless about their future. Others, await the technological development of the century that will change everything but still feel like their actions towards a meaningful change are limited. And even though there is more involvement and interest than ever in the decision-making of governments on the topic, still very little change is noticeable (Rajamani, 2020). This is often associated with the global conversation relating more to dealing with the symptoms of environmental degradation, rather than the causes. While there is a multitude of systematic causes of environmental degradation, there is one that is most striking. That is the underlying logic and perception of nature simply as an object with an instrumental value. That belief seems to paralyze any attempt at a real system change that would produce meaningful transformation. The lack of action presented as ignorance or impossibility in combination with the feeling of accomplished comfort found in constant consumption is what keeps fueling the idea of the human-nature divide, that conveniently presents man's domination over nature. As it is argued by Adelman (2015) this idea has been therefore spread through epistemologies of mastery present in language, culture, legal system and livelihood. As many critical thinkers argue – the inaction and doubt about protecting nature is not about scientific or technological disbelief, but rather about ideological and cultural beliefs that conform with existing worldviews (Almiron & Tafalla, 2019; Hoffman & Sandelands, 2005).

This research aims at establishing the importance of the connection between ethics and international law. The main question of this work is if it can investigate the underlying ethics in the

leading international instruments for protecting the environment, as well as to examine if we can improve those by extending our moral consideration of nature. In order to achieve this, it considers the current gaps and flaws in the international efforts to protect biodiversity, to stop global warming and to deal with all current issues of environmental degradation. Firstly, current prevailing environmental ethics theories are addressed and broken down to serve as a basis for the further study of environmental law. Then, an ethical analysis is conducted to parts of both international environmental law and human rights law. While environmental law is the main instrument for protecting the environment, it has a close and significant relationship with human rights law. Many even regards human rights law as the best possible instrument to protect the environment.

More specifically, the research analyses the both the general role of human rights in the protection of nature, and the specific rights connected with nature, often called environmental rights. Those are the concepts of a right to a healthy environment that recently became an official part of the UN system, as well as the more underlying idea of the existing body of law, namely the right of future generations. Relevant case law is also taken into account when observing the human rights framework, since the decisions of the Courts are undeniably an important part of the thought-process in the consideration of future cases. As such, this research aspires to continue and enrich the discussion of possible productive developments of international environmental law, when taking into consideration the underlying ethics of both the existing and the future construction of the law.

The following chapter aims at providing a literature review of the leading theories in environmental ethics in order to establish a strong basis for the reader in the current ethical discourse. The focus is specifically built on two opposing concepts – anthropocentrism and ecocentrism. Those are binary concepts that are often used as a basis for analyzing environmental protection through ethics. While anthropocentrism entails moral consideration solely of human beings, the ecocentrism idea argues for moral consideration of all parts of nature equally. As opposites, it is easy that those concepts polarize their supporters. As such, this chapter aims at demonstrating the vast spectrum of ideas present in between the antipodes. More importantly, it tries to show that there is a way to go beyond them by revealing what they have in common that might be harmful for the discussion all together.

In the third chapter of this research, the focus falls on International Environmental Law (IEL), its history and its general objectives. The purpose of this part of the research is to disclose the tight connection between the prevailing ethics of a time and the influence of those on multilateral

agreements about the environment. In addition, the chapter plans to show the disparity of current documents with the wish to properly intervene on environmental degradation. More specifically, the chapter focuses on the nuances of how legal language can create holes for people to act in own economic interest, rather than in the interests of the environment. The main focus falls on the 2030 Action Plan and its Sustainable Development Goals, which are often considered a strong instrument for the protection of nature, but in fact have many weaknesses.

The research will then move on to consider the next big international contestant for being the protector of the environment, namely human rights law. While obviously intrinsically anthropocentric, people still consider human rights law as a possible instrument that holds strong symbolic power and is able to influence States to take more action for change (Grear & Kotzé, 2015). The chapter specifically focuses on the currently emerging environmental rights – The right to a healthy environment and the implicit right of future generations. Through the lens of environmental ethics, the chapter aims at showing the vulnerabilities of those instruments to be the leading tool for the protection of nature.

Finally, the last chapter aims at clearly stating the challenges that human rights have in protecting the environment and then moving on to discussing alternative models. More specifically, the last perspective that the research takes are that there is a need of a systemic change in the way that our instruments are build. Those alternative models could be helpful to fill in the gaps in moral considerations in both international environmental law and environmental human rights law. The chapter discusses the ideas of critical environmental law, as well as the idea of right of nature, which is already a realized method for protecting the environment, just not on a global scale.

When starting to read the following chapter what is important for the reader to keep in mind is that the ethical concepts that will be reviewed will be used as to position the human in the ‘human nature’ relationship, constructed by our international legal systems later on in the thesis.

Chapter 2: Environmental Ethics: From Anthropocentrism to Ecocentrism

Even though humans have to make moral decisions every single day, probably not everyone is constantly checking what ethical system they are in line with. However, these systems or theories are important when we try to analyze human behavior. They also make it easier to see what beliefs a certain culture is based on, which becomes fairly visible through the choice of ethical considerations in any human construction. Furthermore, education and understanding of ethical concepts and theories is essential when people want to start being more conscious of their own moral choices and when it comes to a larger important discussion that is being held.

Currently, the way that societies choose to act towards environmental issues is largely a debate in which people use ethical and moral considerations that are not necessarily aligning with their own cultures. This strongly depends on the place on earth where they have been brought up, some societies keep a strong traditional moral approach to the issue, while in the larger part of the world there is consensus that a change is necessary. Especially in the West there is a strong rhetoric, often within the youngest generation, that asks for reconsideration of moral validation when it comes to nature. As such, nowadays many people build their moral compass based on personal research, scientific findings and sometimes perspectives learned from other cultures.

As there is such great importance of people's daily moral considerations, there is an even greater sense of significance when it comes to the beliefs and ethics of whole communities. This chapter aims at decoding the scope of moral perceptions of nature and present the most prevalent theories concerning the human relationship to nature and its meaning. This objective is carried out by first discussing what a scope of moral recognition entails. Further, the chapter focuses on the often criticized 'Western' belief of mastery of nature and how that disconnects humans from the rest of the natural inhabitants of the world. Following from this, the chapter introduces the concept of 'anthropocentrism' – an ethical viewpoint that portrays humans as the only morally considerable subject. Then, the focus goes to the opposite viewpoint, namely 'ecocentrism' – the belief that all living organisms have an equal moral value. Finally, the chapter tries to go beyond the classical standpoints on those and analyzes authors that argue for a more complex view on environmental ethics.

The Scope of Ethical Decisions

Generally, ethical issues largely vary on a specter of very personal dilemmas that would affect one immediately, to matters that feel completely intangible, because the consequences will not be felt in a person's lifetime. As John Nolt argues, the growing of our conception of the moral community is an undeniable measure of moral progress. In the far past morals were part of a tribal system. This means that whatever you did to someone outside of your tribe would not be considered immoral, because the victim was from another group, which takes them outside of the ethical circle of objects. However, this way of thinking has been changing with the rising of globalization to the extent to which nowadays the moral community has expanded massively – it is likely that people know and care about what is happening on the other side of the world (Nolt, 2015, p. xi). When it comes to the ethical consideration of people with different cultures from different sides of the world, the human rights field has had an immense positive influence connected to the expansion of moral care. It has created international methods of generating responsibility for the care of all people's well-being and ways for offering protection to victims of injustices often posed by one's own country.

The focus of this research is set on a specific topic within the field of ethics, arguably the most urgent and challenging one currently, that is the issue of environmental degradation and the extent to which human responsibility has to grow to prevent it. That includes the mindset of people about separate environmental issues, like overpopulation, climate change or the loss of biodiversity – for each of which there is a need for constant scientific information flow that allows people to base their ethical considerations also on scientific understanding. It is at the same time crucial to consider the need of climate justice – a concept that is often used in the language of human rights. It entails that while climate change is happening everywhere, the immediate impacts are not the same. The effects are disproportionate on social groups that have already been marginalized where there is a need for recognition and equity when dealing with environmental issues. This will necessitate some people taking more responsibility for protecting other more vulnerable groups from environmental degradation and anomalies that come with that.

The Human Rights field provides moral ideals and a strong language that is used as a rhetoric to defend both people and other species and to fight for their moral recognition and protection. This does not come as a surprise, as Grear & Kotzé (2015) argue human rights carry to a strong symbolic

plea, an urgent ethical demand, which makes them exceed and complicate the scope of international law. For this reason, human rights can be the potential means for considering and communicating new ways of imaging the future and changing some current systematical deficiencies, including when dealing with environmental matters (Grear & Kotzé, 2015). While it is undeniable that human rights only intent human interest in their narrative – human interest is currently aligned with the assumed interest of nature to survive. Furthermore, one of the most attractive part of the human rights rhetoric is the aforementioned idea of climate justice, which promotes not leaving behind marginalized groups when trying to combat climate change and the disasters science has shown it will bring. However, even though human rights activists use a strong rhetoric in plea to extend moral consideration, still there are significant challenges for people to be able to actually consider and care for more than their very close ones. Specifically, the difficulty of making ethical environmental choices is that the consequences are not fast enough for people to feel the gravity of those. Maybe it is hard to imagine that a choice you make will have an effect on someone that you are not in direct contact or lives far from you.

For example, it is now well known that most indigenous groups have values and culture that is considered tightly related to the wellbeing of both humans and nature. Their environmental ethics which are based on their traditional knowledge is deeply concerned with a conscious consumption, governance of natural resources and protection of biodiversity. These groups are considered to be the people living closest to nature and proving to be the best local guardians of ecosystems but are also the ones that have the least power in making environmental decisions. Their knowledge is not only useful in reinventing and developing better environmental governing systems, but also fighting for equity and cultural diversity. There are attempts at bringing the voice of indigenous people in the conversations through publications like the series of Local Biodiversity Outlooks (LBO), which specifically aim at including indigenous knowledge and perspectives in the post-2020 Global Diversity Framework, an international plan that aims at bringing transformation in society's relationship with biodiversity (Cariño et Ferarri, 2021). The LBO has been published twice, once in 2016 and again in 2020, it is a report that provides a comprehensive explanation of the perspectives and insides of local and indigenous people about sustainable livelihood that would facilitate the 2050 Biodiversity Strategy. While valuable, these perspectives are often overlooked, and the people represented in the document are usually unheard. Moreover, if such people have been more vocal, they have been silenced. Cariño et Ferarri (2021) provide evidence that there is an increasing number

of murders of indigenous human rights and environmental defenders. Simultaneously, these communities are the ones that are most directly affected by the consequences of international environmental decisions and actions. (Heinämäki, 2010). While this is a horrific issue and it needs attention, it does not receive enough. That is because often only people that are deeply affected or very committed learn about the most recent developments in this issue and popular media rarely brings indigenous struggle to the front.

The same way that space is a challenge for ethical perception, time seems to be a huge disturbance for people's circle of moral considerations as well. If it's difficult to imagine the impact of actions on current people, it is even harder to imagine that it will have a huge effect on the future people populating the earth long after current generations have passed away. The doubts as to the importance of thinking ahead for future generations have raised a profound conversation about the validity of the arguments concerning sustainability for our descendants. Should contemporary people worry about what the life of their heirs in 100 years from now would look like? Even if it is hard to imagine, a large portion of environmental documents, conventions, charters and treaties adopted by the United Nations (UN) already hold this line of thought and consider the responsibility of current living people for future generations. As such, intergenerational justice becomes an integral part of how we think of international environmental law, a shift in thought that further augments the moral consideration of our societies.

Furthermore – there is the question: should humans worry only about the effect they have on the lives of other humans, or should the field of environmental ethics grow beyond human interest to non-human species getting to see another day? Moral systems that solely consider humans as ethical objects are defined as '**anthropocentric'**. Sometimes, theorists perceive it as right to expand their field of care to sentient animals – animals that have been proven to experience pain and joy; this is part of **animal ethics**. Others argue for an equality of importance of all human and non-human life, that however is found controversial even within environmental ethics, it is defined as an **ecocentric** view (Nolt, 2015).

Continuing the discussion and defining the importance of different views within the field of environmental ethics is extremely important because international systems like law, economy or environmental regulations develop side-by-side with "prevailing values and opinions" (Koivurova, 2014, p. 13). As we are in a global environmental crisis, it is even more important to reevaluate and

discuss the prevailing environmental ethics. Currently, each person's devotion to being part of the solution of the crisis is critical. For that reason, the next section in this chapter will look into the arguments made for the foundational beliefs that separate humans from nature. Specifically, it will discuss the ideas that humans are in a more important moral position then the other inhabitants of the Earth. This separation is an important basis for the arguments supporting anthropocentric views, that consider only humans to be important in terms of moral consideration.

Foundational Western Dualism and the Epistemologies of Mastery

The human mind finds ways to justify and explain its beliefs. Often that is done through the justification of reason, perception, memory and some explanation of truth – whatever that entails. All of those ideas structured together as foundational beliefs fall into the philosophical branch of epistemology. Epistemology is the study of the nature of knowledge, it looks at the ways things are defined, including the limitations of knowledge and justifications those holds (Moser, 2005). This research focuses specifically on the ides of '**epistemologies of power**'. These are systems of knowledge that create a belief that two supposedly binary concepts are disconnected in every possible way. More importantly, one of the binary concepts is considered superior to the other – it becomes the symbol of superiority, while the other becomes representative of all that is bad in the world. This way of thinking provides a safe way to dictate what is good and what is bad. It also facilitates praising everything 'good' and subjucating everything and everyone that falls to the 'bad' side.

This is a commonly discussed cultural issue, not only in connection to nature but often in connection to other power relations used for the purpose of domination. Good examples are all movements that aimed at domination over another social group like colonialism. Adelman (2015) argues these epistemologies of mastery take pride in having a universal and objective perspective, while at the same time they are legitimizing only certain types of knowledge and rationality like law, or theology, as well as solely scientific methodology. As discussed here, this is problematic by its very nature, since while there are indisputable merits in each of those domains, they have also been built by people, often carrying their prejudices as well as intentional misrepresentations of 'the opposing binary'. This way anything that seems to represent an alternative is considered as an opposition, and as a threat to the correct assumed order – this is a way through which domination and subordination has been used for the profiting of both people and nature.

As Washington (2017) demonstrates, the notion of nature has changed over time, as well as the prevailing ethics, spirituality and cultural understanding of the relationship between people and their surroundings. In pre-historic art it is visible that ancient humans perceived nature as sacred, as a mother and as an inseparable part of the universe. People were perceived only as a part of nature and the idea of living harmoniously with nature was an integral part of cultures all over the world (Washington et al., 2017). This worldview has largely changed with the beginning of the modernist era. The time of great scientific and technological revolutions continued the humanization of nature that had already begun with the agricultural advancements. Simultaneously began the creation of modern ideas of economics that still prevail today, and the ideas of infinite needs and unlimited growth served as the ethical justification for capitalism. This Washington (2017) argues is when the divorce between people and nature was completed.

Another way to approach this phenomenon of separation is by using the idea of the western philosopher René Descartes of a foundational dualism, an idea of the separation of mind and body. This concept is taken further to a fundamental western dualism, a concept that defines the idea of a subject-object relations (Nimmo, 2011). People are subjects, while everything non-human is considered an object. This dichotomy has continuously been pushed forward, placing humans and non-humans in separate ontological domains, when in fact the two parts of the dichotomy are mutually constitutive (Nimmo, 2011). This problem of perceiving subjectivity as a solely human trait has been defended through the argument that "humans' possess 'minds' and 'consciousness' whereas all non-humans do not" (Nimmo, 2011, p. 61). He further explains that this puts non-humans in the position of merely existing whilst humans are existing and thinking, they are conscious and self-conscious (Nimmo, 2011). He argues that in order to challenge anthropocentrism, or the belief that humans are the most important inhabitant on the planet, this dichotomy will inevitably need to be disproved, which is difficult because it is the ethical basis of social scientific knowledge (Nimmo, 2011).

A modern example of this way of thinking is the constant argument that the only way to fight climate change is through some extensive new technological development, that we are awaiting. There is no denial here that there is an actual need for technological developments, specifically in connection with our use of fossil fuels and the need for electricity. However, there are ultimately many other things that could be done to improve the situation – like consuming less, producing more efficiently and so on. In that way, technological development is often seen as just another instrument

for the experiment of engineering the climate to further exercise power and dominance over nature without repercussions (Adelman, 2015). This brings us to the point of what happens when people believe that they are independent from everything else in the world and that the Earth is only there for them to exploit it.

The Age of the Anthropocene

The massive exploitation of the earth for human interest comes at a price and the changes that humans have caused to earth are so severe that the present geological era is defined by the human presence, more than by any other species (Philippopoulos-Mihalopoulos, 2015, p. 28). It is argued that the era, named the Anthropocene, is mostly defined by the effects of human actions that completely overweight other 'natural changes' (Ruddiman, 2013, p. 46). Of course, it is valuable also to consider if human changes can also be qualified as natural changes. The notion underlines that people have a heavy effect on earth's processes which influences every living being on the planet. As Ruddiman (2013) claims, these changes have been proven to be the most significant after the beginning of the industrialization period gaining strength globally in the 1850's (p. 46). The developments of this era have caused many radical natural changes like deeply eroded soils, fragmented ecosystems, algal blooms destroying coastal waters, or natural water pools being strongly acidified – all of these processes either starting or expanding significantly in the last 150 years (Ruddiman, 2013, p. 46).

At the same time the complexity of the Earth's system makes it very difficult to establish "simple, clear, linear links between causes and effects" (Grear & Kotzé, 2015, p.4). This entails that the solutions to all the issues are not going to simple either. Grear and Kotzé (2015) discuss the urgent need for future regulatory interventions to be "complexity-sensitive and reflexively critical of law's own epistemic assumptions" (Grear & Kotzé, 2015, p.4). From one angle, the Anthropocene makes it impossible for humans to not take responsibility and simply name the changes natural, because people are also part of nature. There is enough data proving that these changes are evoked by human activities. Hence, in order for those processes to be slowed down or reversed, there is a need for a radical change in on the procedures connected to exploitation of earthly resources. Taking the suggestion of human-created geological era as a premise has given birth to many ethical theories that try to find a way to resolve environmental degradation.

Adelman (2015) pleads that any possible solution to the current environmental crisis will be "impeded by ideologies that fetishize growth and technology, such as developmentalism, extractivism and neoliberalism" (Adelman, 2015, p.1). He argues that these ideologies are reinforced by epistemologies of mastery of humans over the environment because they have the technology needed to deal with the consequences (Adelman, 2015). These beliefs are basis point on which people also consider themselves the only morally important being. Often moral considerations are built on the idea of consciousness and the analyses whether one is able to create and think in a certain way to be considered valuable. That brings us to the idea of anthropocentrism that is thoroughly discussed in the next section.

Anthropocentrism

Anthropocentrism, generally perceived as the philosophical idea that only human beings are significant enough to be morally acknowledged, is a concept that takes many forms, and it is difficult to escape since arguably all of our human constructed systems are inevitably formed around human interest. The concept itself can have an axiological, ethical or metaethical meaning.

As Nolt (2015) explains, the axiological anthropocentrism is a move from the religious presumption that value was assigned to things made by or for God, towards the belief that value is assigned to things created by or for humans. In difference, the meaning of ethical anthropocentrism is defined by Nolt (2015) as the belief that only humans (Homo Sapiens) are morally valuable. Even if there are concerns about non-humans, according to the pure ethical anthropocentrism these are inevitably concerns for human beings and their interest (pp. 64-65) Finally, the issue of the metaethical anthropocentrism is discussed by DeLapp (2011) in order to define the limits of the human rationality, meaning that "the conceptions of morality are constrained by human perspectives and sensibilities" (DeLapp, 2011, p. 38). The author differentiates between ethical and metaethical anthropocentrism on the basis that the first does not focus on the conception or foundations of morality; it only concerns itself with the idea of humans being the sole rightful assignee to moral consideration.

Conversely, metaethical anthropocentrism acts as a "second-order moral' judgement (i.e., a judgement about moral judgement): it is a claim about what morality is" (DeLapp, 2011, p.38). This idea of a metaphysical anthropocentrism is very important because it shows the impossibility of people to be completely non-anthropocentric – a position that other strands of thought like

ecocentrism are criticized for assuming. This is an often-posed critique to these non-anthropocentric ways of thinking. Bielefeldt (2021) proposes, for example, that many critics of anthropocentric rights promote anthropocentrism of responsibility. He shows that it is just as anthropocentric to expand the right-holders beyond humans, but to put as duty-bearers solely humans (Bielefeldt, 2021, p. 524)

Ecocentrism

On the other side of the spectrum, there is ecocentrism – this is the nature-centered, rather than human-centered value system. Washington et al. (2017) place it as the broadest term for perceiving "intrinsic value in all lifeforms and ecosystems themselves, including their abiotic components" (p.1). It is an important movement, because many believe that our inherent anthropocentric assumptions about some environmental hierarchy is both the reason and the biggest difficulty in fighting the environmental crisis. It means also that as long as the ecosphere is seen as simply a field for human activities, then human interest will always be seen as more important than sustainable living (Newman,2011). This does not mean that human interest is completely irrelevant but entails a more balanced view of priorities. Washington et al. (2017), for example, call it the 'old sustainability', since it used to be present in cultures where both the value of humans and the one of natural systems was respected. They argue that the two are not in opposition and maintain that many indigenous groups reflect this way of viewing the world, even though they still have to use their land to survive. As Newman (2011) argues, the ecocentric perception of the world has been declining since the increasing attempt of 'humanizing and domesticating the wildness of nature' (Newman, 2011) that comes with the agricultural social order.

Anthropocentrism almost always takes expression in our regulatory acts, an example is the Rio Declaration, whose first principle is: "Human beings are at the center of concerns for sustainable development." (Washington et al., 2017). Currently, the ecocentric value system is hardly present in international law, and it has been recognized but never really implemented. The only document of the UN that proposed an ecocentric worldview is the "1982 World Charter for Nature" with its first principle being: "Nature shall be respected, and its essential processes shall not be impaired." (UN General Assembly, 1982). In this principle instead of placing the whole focus on people and their needs of nature, there is a focus on 'respect' and non-impairment of nature. This is a rare configuration of words in the field. Even though this document has an ambitious aim, it has not been endorsed by further declarations. As Newman (2011) also confirms currently most environmental

protection laws are for the sake of protecting humans. She explains that an example of an anthropocentric perspective is seeking the restriction of pollution as a law that is specifically designed to protect humans. If laws were deriving from and ecocentric perspective, they would instantiate "natural equilibrium as a fundamental and common legal value and its maintenance as a human right." (Newman, 2011). However, this is often seen as an optimistic viewpoint, since humans inevitably always depart from a human-centered position. That is why an often-developed critique against the ecocentric view is that it is too drastic – it has been often called "radically egalitarian" (Newman, 2011). By creating complete equality between human interest and the interest of nature, decisions will be very difficult to make, since it is impossible for human beings to perceive the world objectively, outside of their humanness. For stretched example just to illustrate this argument can be if a choice has to be made between a human life and the life of a tree – how would people have to bring themselves to considering the two options equally important.

Anyway, many things that the whole prism of thinking linearly in terms of anthropocentricity and eccentricity is too simplistic for the complex natural world that we live in. The next section of this chapter deals with that line of thought and aims at expanding the perception of possible ethical positions a human can have in this discourse.

Moving Beyond Anthropocentrism and Ecocentrism

A comparison between the anthropocentric and ecocentric world views is often made. However, there are a growing number of theorists that critique both. As De Lucia (2017) contemplates, neither of those binary concepts even remotely manage to frame the complexity of the issue. Philippopoulos-Mihalopoulos (2015) argues that both views are as flawed as one another. On the one hand, he claims that if humans are not adequately positioned to have knowledge, then a human rights approach is flawed. However, all the varieties of an ecocentric position are also flawed and illuminating the absurdity of the anthropocentric position. He believes that seeing humans just as a part of the big natural system is not helpful for the current situation. That is connected to the current geological era, the Anthropocene, which is largely determined by humans (Philippopoulos-Mihalopoulos, 2015). He believes that the problem of both these theories is that they are pinned to the center, rather than obtaining a more uncomfortable, but useful post-humanistic approach, that would be helpful in creating critical environmental law (Philippopoulos-Mihalopoulos, 2015).

Others, like DeLapp (2011) believe that anthropocentrism, at least in its aforementioned metaethical form, is inevitable. He argues that complete moral objectivity is unachievable because humans will always be bound to their subjective personal standpoint. He argues that even though it is fair to assume that moral values exist independently from human beliefs about them, their content, perceived by a human, will always reference to uniquely human capacities. This means that it is inevitable to not interpret them through an anthropocentric frame for interest or perspective (Philippopoulos-Mihalopoulos, 2015). He proposes as a solution Daoist philosophy, which is "highly critical of anthropocentrism, urging readers instead to transcend the limitations of our circumscribed experience, our petty social positions and our sometimes-selfish personal projects" (Philippopoulos-Mihalopoulos, 2015).

All the ethical positions and theories that are reviewed here highlight the complexity of the human position in connection with the environment. There seems to be a constant struggle between being part of nature and simultaneously having the capability to seemingly disconnect from it and think in independence. This chapter aims at displaying the rich spectrum of perspectives on the topic. Each of those has its merits and its innate logic. Inevitably a person cannot completely dissociate from their humanness and consciousness. This being said, there is a question that immediately is born – does that make people a more important asset of nature than all other species on Earth? And if a person wants to live in balance with nature, how is that achievable without being hypocritical in ignoring your humanness in the process? Understanding the variety and the complexity of different environmental ethical ideas provides the reader with the tools to analyze and understand better the underlying building blocks of human constructions, and in this case, specifically, it provides the basis for understanding better the logic behind international environmental law documents and treaties. In the following chapter, the research will address International Environmental Law and its specificities in order to investigate what are the fundamental ethical ideas in the bottom of arguments. Furthermore, it will provide a critique of how the constructing ethics influence a positive protection of nature.

Chapter 3: The Challenges of International Environmental Law and the Accompanying Ethics

As the notion suggests International Environmental Law's focus should be the protection of the environment. Nonetheless, as any human instrument IEL is a system created to protect human interests. Even though the object of the matter is the environment, its history shows that it is inherently anthropocentric in its aspirations. On the one hand, considering the metaphysical aspect of anthropocentrism that is discussed in the previous chapter – as with any human construction, it is impossible to run away from the human perspective. On the other hand, the reason for the anthropocentricity of current International Environmental Law is based on the ethical read of the concept, namely that the environment is not deemed a moral entity. Rather, even behind the pretext of protecting it, the assured human interest is in short-term economic gain. That's why most of the legal instruments of IEL are accused of being utilitarian, instrumentalist and neo-liberal (Adami, 2013). As Dupuy & Viñuales (2018) demonstrate, the trend over the years can be graphically displayed as a line of consideration that fluctuates between environmental protection and economic development. Additionally, after the Johannesburg Summit of 2002, as well as the Rio Summit of 2012 and the 2030 Agenda for Sustainable Development held in 2015 the line is almost entirely in the development field and a lack of balance in the 'environment-development equation' thereof (Dupuy & Viñuales, 2018). Another standing critique of IEL is that it protects some groups of humans more than others – as such it traditionally reflects also ethnocentric perspectives (Adami, 2013). Once more, as a human construction, international environmental law is dependent on other current predominant philosophies of the time. That includes culture, social movements, ethics, morals and beliefs – each of which is expressed through actions, decisions and current interests in communities. Thus, the history of the protection of the environment through environmental law has gone through many changes over the years. While there have been many positive developments, there have also been others that are harmful for the overall goal.

In a way the history of international environmental law can be traced 500 years back – mostly as transboundary arrangements between countries concerning the use of natural resources (Sand, 2015). These were not really documents meant to protect the environment from degradation, they are rather a separation of interests for natural resources. In the last 50 years, however, there has been a massive turn in understanding what IEL would constitute. There has been a recognition of the need to develop IEL and augmentation in motivation for a more precise and thorough protection of the environment. While there has also been a substantial growth in public interest, activism and

ecological engagement, there are still extreme difficulties to come to an international agreement in order to insure a more productive environmental protection while also keeping all parties satisfied,

The aim of this chapter is to see how the ethical theories of the previous one come into practice when environmental law is created. The first step to achieving this is to go through the history and conceptualization of international environmental law in the decades. The main actors are States and looking at their decisions throughout the years it becomes clearer how the interests of those States have changed and developed. It also becomes visible how strong global social movements have influenced the whole field. The next objective of this chapter is to provide a critical overview of the ethical aspirations sitting behind the most prominent international documents of our time that argue for the protection of the environment. There is a question to be asked if the field has the actual potential to address the urgent matters of the fastest environmental degradation that humanity has ever witnessed. The critique does not aim at shutting down IEL and arguing against its necessity. On the opposite, it aims at displaying its weaknesses and gaps, in order to be able to address those and develop the field appropriately so that it can achieve what it strives for. It specifically focuses on the anthropocentrism of International Environmental Law through examples like the discrepancy between legal language and reality, as well as the 2030 Sustainable Development Goals.

The Eras of IEL – Traditional, Modern, and Post-Modern

The period prior to the infamous first world conference on the environment, namely "the 1972 United Nations Stockholm Conference on the Human Environment" (UNCHE), is considered the traditional era of international environmental agreements (Sand, 2015). During this era international environmental law-making was mostly concerned with the separation of access to natural resources and 'goods', transboundary damage or shared watercourses (Dupuy & Viñuales, 2018).

As Washington (2015) argues, since during the Renaissance the idea of the secular State was put forward, the humanism and individualism started pushing economic interests, rather than religious. During the modernism science and economics took a central role in the building of morals, which brought more and more the objectification and mechanization of nature. (Washington, 2015). Furthermore, the motives for law-making at the time were completely utilitarian, self-serving and anthropocentric and an example is the "1900 London Convention Designed to Ensure the

Conservation of Various Species of Wild Animals in Africa That Are Useful to Man or Inoffensive" (Sand, 2015). Words like "useful to man" or "inoffensive" show a very clear perspective through which animals are analyzed as objects that either serve a developmental purpose or are a thread. A classic example of this time is the case known as Bering Sea Fur Seals Arbitration (United States v. United Kingdom, 1893) where the United States tried to prevent vessels from the United Kingdom to seal in the Bering Sea. After unsuccessful negotiations, the case was submitted to arbitration and the United States argued that they have the right to protect fur seals even outside of their legal borders. The protection that they were arguing for was not in any way connected to preserve the species, but simply to secure its economic exploitation. The Court sided with the United Kingdom (Dupuy & Viñuales, 2018). This case displays the logic and moral considerations of the time.

Luckily, in the middle of the 20th century, many ecologists started writing about specific issues that need attention, an example is the infamous book "Silent Spring" by Rachel Carson, that reveals the toxic effects of pesticides on wildlife (Washington, 2015). The culmination of this movement was the first world environmental conference ever held – namely the 1972 Stockholm Conference, Sweden. Sand (2015) defines it as a result of the global rise of environmental issues, the growing public interest and awareness of those issues, as well as some innovative national legal responses to environmental challenges. Delegations of over a hundred States, as well as representatives of major intergovernmental organizations were present. The material results of the Conference are the 'The Stockholm Declaration on the Human Environment', an 'Action Plan for the Human Environment' and the establishment of the United Nations Environment Programme (UNEP) (Dupuy & Viñuales, 2018). The conference is regarded as the beginning of environmental diplomacy, and it highlighted the North-South divide when it comes to environmental issues. The North being worried about environmental degradation, while the South trying to tackle poverty and overpopulation through development. The difference in approaches also reveals a lot about the variation of ethical considerations based simply on needs and economic position.

The era after the Stockholm convention Sand (2015) calls the modern era. Even though the Conference did not produce any written treaty law, it has been the basis for many to be created, and it also promoted a new way of consensual international law through soft law. This allowed for the nature of international environmental relations to seriously broaden and to focus on more than interest in natural resources – to recognize the seriousness of environmental issues, as well discuss the interconnectedness and global nature of what had seemed to be local problems (Sand, 2015). At a

regional level, it marked the beginning of environmental legislation in the European Context (Dupuy & Viñuales, 2018). Simultaneously, it brought development to national laws and policies worldwide and as such it is considered one of the most important documents of IEL. This is the period in which International Environmental Law started being perceived as "a distinct academic discipline" (Sand, 2015).

The last era that Sand (2015) identifies is the post-modern era that is characterized by raising new questions and decentralizing the institutional structure of the implementation of treaties. As such, the focus of both important IEL documents in the 90s - the Brundtland Report (WCED 1987) and the 1992 Rio Conference, was way more focused on the 'effectiveness' of existing international legal instruments and adding an additional layer of global treaties (Sand,2015). The 1987 Brundtland Report, also known as 'Our Common Future,' brought forth the concept of 'sustainable development' defined as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs" (WCED, 1987). The three components of sustainable development are economic growth, environmental protection and social equity, as the Brundtland Report highlights the unsustainability of common world practices (Washington, 2015). Washington (2015) argues that the report focused on promoting sustainable social and economic advancement, rather than stressing enough the seriousness of the environmental reality which calls for an actual debate on whether we should prioritize development over the environment in the first place. However, the concept was seen as a unitor of politicians, giving them a common concept that they could stand behind, no matter if their interest was development or environmental protection. The 1992 Rio Conference reflected the report, and it adds pluralism in three levels: the north-south with 'common but differentiated responsibilities', instead of egalitarian responsibility; the inter-temporal 'sustainable development'; and finally, it gave access to civil society to gain a more important role in decision-making (Sand, 2015).

The further development of IEL since the beginning of the current century in terms of geopolitical, social, economic, epistemic and cultural contexts is given in a lecture by prof. Lavanya Rajamani (2020). She argues that the understanding of environmental issues has deepened, firstly because the scientific knowledge on the topic has deepened, but also because generally there is a more sophisticated and nuanced look on the causes and interconnectedness of the issues. Moreover, recognizing the current geological era as the Anthropocene has incited strong social ecological movement on a transnational level, engagement that before was mostly seen for local environmental

issues (Rajamani, 2020). As the engagement has multiplied greatly, there are also many more voices and approaches that are present in IEL, especially when it comes to climate change, the topic that has caught the attention in a way that would be "inconceivable 20-30 years ago" (Rajamani, 2020). However, with all those changes, coming to an international agreement has become even more complex and difficult and the actual achievement in the scope of environmental issues is modest. Rajamani (2020) argues that the ability of international environmental law to influence State behavior is approaching its limit.

After the 2000 Millennium Summit and the adoption of the Millennium Development Goals (MDGs), there is a renewed attention towards the issue of sustainable development. Dupuy & Viñuales (2018) argue that even though the attention of the goals is clearly on the economic and social development, there is rhetoric connected to the respect for nature. Since their implementation the UN General Assembly has met several times to address the progress on the goals. The post-2015 continuation of the MDGs is the 2030 Agenda for Sustainable Development (2015) following the 2012 Rio Summit. Dupuy & Viñuales (2018) argue that even though the 2030 agenda has come under a lot of criticism for being too broad, it has generated momentum both on domestic and international levels. Furthermore, that governments and organizations both in the private and in the public sector are incorporating the SDGs. Nevertheless, it is unclear if those will truly create change or if it is simply a "change in formulation" (Dupuy & Viñuales, 2018).

The Tensions Between Environmental Protection and Human Interest – the Anthropocentric Nature of International Environmental Law

There seem to be many clashes when it comes to the interest in International Environmental Law, while it is supposed to protect the environment, its function lays in problem-solving between States. As such, it makes it very visible what the interests of the States as actors are. This section of the chapter aims at looking at different parts of international environmental law that seem to pose a clash between human interest and the interests of the environment.

Environmental protection vs. Natural Resources

Kuokkanen (2015) identifies international law as problem-solving method on an international level. This simple phrasing actually brings out many tensions that are often present in the legal decision-making process. The important disruption comes from the fact that the definition of environmental problems and legal problems differs – while environmental degradation in any of its

forms is an environmental issue, it does not mean that it classifies as a legal issue. An example provided by Kuokkanen (2015) entails that if there are unilateral trade restrictions based on environmental concerns, even if they are made with good intentions, they might cause trade law international issues along the way. Thus, the relationship between different types of international law and the environment is complex and there it will always fall back to a struggle between environmental protection against exploitation of natural resources.

There are three identified approaches to dealing with that issue. Two of them opposing each other and one that is a conversion of the two. The first is an 'undifferentiated approach' and was mostly present during what we identified as the traditional environmental era. That approach the general methods of international law are employed also on environmental issues and there is no consideration of environmental degradation. The opposing approach, named the 'separated approach' entailed that "the law of natural resources focused on deregulation, inter-national environmental law involved international regulations" (Kuokkanen, 2015, p. 43). The third, most recent approach that he identifies is the 'integrated approach' where the two other ones got united. Even though the three approaches seem different, they nevertheless remain interlinked. Finally, the fraction between protection and exploitation remains and it would always be a challenge to balance it (Kuokkanen, 2015).

The definition of 'environment' and 'pollution of the environment'

Since law is built on principles and definitions, those will be vital starting point for the further interpretation of concepts in order to make legal decisions. As provided by Sunkin (2001) the fundamental definitions of the concepts of 'environment', 'pollution of the environment' and 'harm' come from section 1 of the Environmental Protection Act of 1990 under the jurisdiction of the United Kingdom. There the environment is defined as consisting of "all, or any, of the following media, namely, the air, water and land; and the medium of air includes the air within buildings and the air within other natural or man-made structures above or below ground." (Sunkin, 2001, p. 138). Coming back to the importance of language, Adami (2013) argues that even the word 'environment' is born from the human-nature division, since its etymology comes from Old French's 'environer', meaning "to surround, enclose, encircle" (Adami, 2013, p. 353). She argues that already this use of the language creates the impression that the environment is simply the surrounding objects of humans, which are disconnected from them. This also limits the amount of moral consideration that

these objects deserve. Essentially the idea of the environment is already anthropocentric, since it is just a means to an end for the well-being and livelihood of humans (Adami, 2013).

Next, pollution is the release of contaminating substances into those mediums that could cause harm to the living organisms there. Finally, 'harm' entails harming the health of living organisms "or other interference with the ecological systems of which they are part of" (Sunkin, 2001, p.138). However, defining harm is not as simple as it seems and that is why the next section of the chapter specifically addresses how another disruption between legal language and environmental language arises. This disruption causes yet another clash in environmental law between human interest and environmental protection interest.

The Difference between damage and harm

A critical analysis specifically of the EU legislative system is made by Gouritin (2021) in order to illustrate how the responsibility and victimhood of environmental damage is being defined in the EU environmental law. She specifically focuses on the anthropocentrism in practical defining of environmental wrong – on one hand there is 'environmental damage' which encompasses the real factual damage of a natural object. On the other hand, there is the definition of an environmental harm, which represents the "impairment of a legally protected interest or right" (Gouritin, 2021, p.64). As such it can be seen that there is present tension between the real damage on a natural site and the legal construction of what that damage entails. As it is further mentioned by Gouritin (2021) the Directives can recognize environmental damage but not consider it environmental harm – what is considered legally significant is also political. This approach does not recognize any intrinsic value of natural elements, it is only measured and considered in connection to human interest. Finally, Gouritin (2021) argues that this approach ignores the societal value of the environmental element, corresponding to the harm that is being done to it.

The Sustainable Development Goals

Another example clearly illustrating the anthropocentric issues of international effort in protecting the environment is the sustainable development goals. They were first proposed at the UN Sustainable Development Conference of 2012 – RIO +20 Summit, reduced through negotiations to 17 goals. Following that, the 2015 UN general assembly document – The 2030 Agenda for Sustainable Development was adopted and is considered a notable step in the commitment towards

global development (French and Kotzé, 2018). The rhetoric of the document goes strongly around the topics of reducing poverty through economic development, cooperation, while managing to achieve ecological sustainability. It sets specific targets that should be reached for 15 years, without giving clear instructions on how to do so. The annual High-level Political Forum on Sustainable Development is the UN platform under the auspices of the Economic and Social Council that reviews and follows-up on the SDGs. It aims at providing political guidance, a dynamic platform for regular dialogue, and give space for an appropriate consideration of new and emerging sustainable development challenges (Sustainable Development Knowledge Platform, 2022).

Considering the issue in the ethical considerations of the Sustainable Goals, firstly we have to look at the meaning of sustainability itself. Washington (2015) discusses the cultural paradigms standing behind natural protection. He considers that there are three hundred different interpretations of the meaning of sustainability and the number keeps growing, while the word is often used by people to push their own agendas. While sustainability as we now consider it is often considered in academic literature to be created as a concept in the "Our Common Future" report of 1987. However, this concept is built on a long-lasting tradition of people thinking about living in "harmony and balance with Nature" (Washington, 2015). These words, while essential in the 'old' meaning of sustainability are considered unrelated to the 'new' meaning of sustainability, even identified as un-academic. That is because the new meaning of sustainability and sustainability goals are lacking the understanding of Nature being 'sacred'. Rather, it is mechanized and the interest of protecting the environment is based on the ethical stance of neo-liberalism, which is utilitarian, anthropocentric and instrumentalist. Thus, the value of nature is solely due to its utility as a natural resource for technological and economic development (Washington, 2015).

Adelman (2018) similarly considers the connection between the sustainable development goals, anthropocentrism and neoliberalism as a form of green capitalism that misses the difference between sustainable development and ecological sustainability. While sustainable development is being portrayed as an achievable process, it is overlooking the history of ecologically unsustainable production which puts economic gain first. According to him true ecological sustainability is incompatible with current production and consumption models. Furthermore, the SDGs reproduce the same mentality through the idea of constant growth. Which is impossible with finite resources, and it also exaggerates the greening of previous practices while continuing the human tradition of exploitation of nature and conceiving at as a never-ending resource for their own benefit.

Specifically, Adelman (2015) argues that the utilitarian and social philosophy of the Brundtland Report reflects a form of “enlightened self-interest, conserving land and resources for later human use” (p.30,2018).

Chapter 4: Human rights as a Possible Instrument for Protection of the Environment

As mentioned before, International Environmental Law and Human Rights Law are very interconnected, and both have a huge role in the current international struggles for environmental protection. This research considers the steadily growing connection between the two fields mostly in its expression of "environmental rights". As part of human rights, they are considered inherently rights for the benefit of people to have a livable environment. This is also often expressed in connection to other fundamental rights like the right to life, to health and to dignity (Dalu & May 2018). These rights are often seen as an effective way to fight not only for human environmental interests, but also even if indirectly "of the interests of the environment" (Grear & Kotze, 2015). In ethical terms, this is an attempt at creating a long-term anthropocentric thought. As such, the belief is that through protecting people and their interest in surviving and having a decent environment, nature will thrive as a result. It is also considered that current governments and the general public will be more easily convinced to change our current ways, in order to save humanity, rather than nature itself – which is considered secondary.

On top of that, the language of human rights has been used a strong rhetoric for environmental justice – a concept that entails both fair involvement of everyone in decision-making of environmental policies, laws and regulations, as well as addressing the inequities in the consequences of environmental degradation. The field of human rights has proven to be effective in defending people in living a better life and in promoting equity. They are based on the understanding that every human being is born with human dignity which needs to be protected. The protection of people falls under the responsibility of States, who also have the active obligation to not to take away basic freedoms from their citizens. Most domestic systems have recognized fundamental human rights, but those are also protected by a universal system, the United Nations, and regional systems in place, like the African, the American and the European systems (Gomez Isa, 2009). There are many challenges in the field, there are many obstacles in the internationalizing the process and creating a "universal culture of human rights" (Gomez Isa, 2009). Nevertheless, in the last 70 years there have been many struggles, turns and developments and the language of human rights has become very effective in fighting against the violations of basic freedoms of people. Grear and Kotze (2015) argue that human rights have the potential to express the deepest desire of humans for different futures, and that the strongest character of human rights it their potential to "overflow law as powerful signifiers of deeply felt human longing for alternative futures – including alternative 'environmental' futures"

(Grear & Kotze, 2015). Ever since the 1972 Stockholm Conference, human rights have had an integral role in the fight for environmental justice, both as a legal instrument and as an appropriate "discursive strategy for protecting human health and well-being" (Burdon, 2015, p.61)

When talking about human rights and the environment, it is important that there are two basic ways in which the framework affects environmental protection. One is to ensure that there is environmental justice for the most vulnerable human beings around the world, who are also the most affected by environmental disasters, and another is to actually protect the environment itself because it is necessary for human survival. The two are often considered to be connected, since no other human rights can be protected if the environment in which people live kills them. In that sense, the need for a healthy environment should be protected by many of the human rights written in the "1948 Universal Declaration of Human Rights". The recognition of the connection between human rights and environmental protection has increased massively and it is sometimes even considered that the human rights framework is the only feasible way to succeed in protecting the environment (Burdon, 2015). Still, there are also many reasons to doubt that Human Rights are the most appropriate instrument to protect nature, since there are many deficiencies, as Burdon (2015) himself points out, that make it insufficient to try to fight for environmental protection solely through that lens. At the core of the issue is that it doesn't work into fixing "the root causes of the problem" (Burdon, 2015, p. 62). Instead, environmental human rights might in fact be just what they suggest – a surface discourse that protects people in need, which in part protects the environment (Burdon, 2015).

As Hikes (2008) puts it, human rights have grown to be seen as a norm in governing States and "the lingua franca of politics in many areas, with considerable success in battles over justice" (p.7). The language of human rights has been used not only in international law, but often also by activists, organizations and collectives trying to fight injustices. They have a fairly strong social character. Hikes (2008) stresses that the social definition of the human rights' field, expressed in the language being used, points to the relational nature of those rights. He argues that human identity is generally defined by human relationships. Those relationships in turn need to construct rights and obligations of moral agency and dignity in order to be possible (Hikes, 2008). The lack of the existence of enough rights and obligations in the relationship between the nature and humans is what makes that relationship still 'emergent'. In other words, there is a need for more clear construction of rights and responsibilities which will protect the relationship better. According to him, for now this emergent relationship is harmful for both sides because of the unstable nature of their social interaction. In a

sense, if we could relate back to human relationships, it seems like there is a lack of trust, a sort of insecurity in this emergent relationship. Thus, here is a need for rights and obligations to be created for the protection of both (Hikes, 2008, p.30). At the same, it is good to remember that humans and nature actually have a relationship of thousands of years. As we have discussed earlier on in this research, this relationship used to be built on trust and respect – elements that really are a rare attribute to this relationship in present times. That is why, as people of our time, maybe there is a real need for a written and rationalized relationship model that is easier to follow, rather than counting on respect.

For this reason, this chapter will further focus on two of the currently discussed emerging environmental rights that are often part of the same rhetoric. Those are the right to a healthy environment and the right of future generations. For each of those there is a summary that aims to provide information concerning their mentions and the way they are built as concepts. There is also a short analysis made for each of them, in order to provide an ethical understanding of them. The objective of this chapter is to criticize the possibility of the present environmental rights to protect the environment sustainably.

The Right to Healthy Environment

Before there was a self-standing right to a healthy environment, there has been ways in which human right violations connected to environmental degradation could still be somewhat protected by United Nation treaty bodies. This has been done through the process of ‘greening’ already existing rights, such as the right to life. Clearly, that entails that if there is a harmful facility, like a factory or a mine, which pollutes the environment and endangers the applicant, this would be considered a violation of the right to life. In addition, in the last years there has been many clear connections by human rights’ bodies about the need for a healthy environment for the proper enjoyment of human rights (Knox & Pejan, 2018). This is also a very intuitive argument, since all rights are complementary and in connection with one another and environmental instability would actually violate way more than a single right.

The Right to a Clean, Healthy and Sustainable environment was first mentioned in the 1972 Stockholm Declaration’s first principle, stating: “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and

future generations.” (Stockholm Declaration - Principle 1, 1972). The Stockholm Declaration then acted as an incentive for this right to be recognized on both national and regional levels. It is included in the “African (Banjul) Charter on Human and People’s Rights, the San Salvador Protocol, the Aarhus Convention, and the Arab Charter on Human Rights” (Boyd, 2018, p. 18) – all of which together have been ratified by 120 States, according to the UN special Rapporteur David Boyd (2018). The Right is also included in the constitutional legal orders of more than 100 States and in total 155 States have legally recognized the right. Boyd (2018) argues that the constitutional adoption of the right has strengthened the judicial response to necessary environmental protection, however according to Knox and Pejan (2018) the formal adoption of the right has very little effect in some countries, which maybe also generally fail to commit to human rights responsibilities. The right to a healthy environment was officially recognized by the United Nations Human Rights Council in a resolution adopted in October 2021. (The Right to a Healthy Environment | IUCN, 2021). And as of July 26, 2022, it is declared as a human right by the United Nation General Assembly with a focus on the urgency to act and protect people from a continuously unfolding environmental crisis (United Nations General Assembly, 2022). Maybe it is not a revolutionary moment, but it is definitely a moment that has been awaited by everyone who cares about both environmental protection and environmental justice. The right to a healthy environment should increase the protection of the most marginalized people in the world that suffer the fastest effects of the climate crisis.

It is important to be mindful how important this right is for the field of human rights. At the same time, for the aim of the current research, it is also important to critically consider the weaknesses of this right to provide considerable environmental protection. On the one hand, it is undoubtedly true that if States are required to keep up a level of quality of the environment that would improve have an overall positive impact. On the other, it is also important to consider the implications of the document and the phrasing of the right. Is this enough for people to regard as a primary source of environmental protection?

Through the lens of Environmental Ethics

Since its first mentioning, the right has arguably been a trigger for many other developments in the sphere of environmental protection. Furthermore, it being acknowledged by the United Nations as a universal right is an advancement that has been awaited by many for more than thirty years. On the one hand, this right is crucial for the fight of environmental justice, it should ensure a minimum

standard of environmental protection for all members of society, independently from their economic or social status (Boyd, 2018). On the other, if safeguarded well, this right will facilitate the protection of ecosystems, since air, water and noise pollution, as well as exposure to toxic substances and failure to enact environmental laws are seriously harming the environment, whilst also endangering the enjoyment of this and other human rights (Boyd, 2018).

The human-rights approach followed by UN documents dealing with the environment is by definition anthropocentric, since the moral motivation behind protecting the environment is protecting human interests. A significant indicator of the position of a document within the field of environmental ethics is the language and the rhetoric used when discussing the issue. While this may seem like a small issue, it can be of a huge importance for the creation of common understanding towards the issue. As such it is important to analyze the language used and consider what moral position it defends. While Adami (2013) argues that specifically the English language often replicates unecological ideologies that are entrenched in it, she maintains that those undoubtably influence cultural values and international law. At the same time language transmits cultural values and beliefs, and as such influences our conception of the environment. The language used when discussing rights concerning the environment is of a crucial importance.

When we are talking about the right to a healthy environment, its first appearance in the Stockholm Declaration, made it very clear that the only reason for protecting the environment is for human's to be able to live in 'dignity and well-being'. This first principle sets the scene of what this document is interested in and that's humans being able to have adequate conditions for life. However, it is hard to define what constitutes a healthy environment – it leaves a big gap in what responsibility the State actually holds for the environment to be considered livable. As Adami (2013) argues, this principle clearly portrays the man as a bearer of responsibility for man's well-being, while the environment is seen as a passive object that needs to be treated in a different way for a different result. This opens up similar issues as the Sustainable Development Goals, in which rather than changing the way we treat nature, there is a sense of a change in formulation. This reveals that the spectrum of moral consideration only includes men and sees the environment simply as a means to an end, an ethically anthropocentric approach, that fails to recognize any intrinsic value of nature.

However, Knox and Pejan (2018) argue that there are many different ways in which the right has been phrased with different ethical inclination, some are anthropocentric, while others ecocentric,

and third include both perspectives. An example provided by them, is the constitution of Ecuador, which recognizes “both the right to a healthy ecologically balanced environment” with a chapter dedicated to rights of nature” (Knox & Pejan, 2018). They further argue that generally the right is often not clarified enough – in terms of which parts of the environment should be protected and why. The examples they provide is that the right is included in regional instrument, but it is not justiciable.

First, the San Salvador Protocol to the American Convention on Human Rights mentions the right to a healthy environment but it does include a list of the rights responding to the rights that would be violated and taken to the Inter-American Commission on Human Rights (Knox & Pejan, 2018). While in the Aarhus Convention it is considered that parties are required to provide “access to information, public participation in decision making, and access to justice in environmental matter” (Knox & Pejan, 2018) which would increase the protection of people to live “in an environment adequate to his or her health and well-being,” (Knox & Pejan, 2018). What all these documents, except the constitution of Ecuador, have in common is that there is a constant human-nature divide that is being built as a fundament of the definition of the right. They are portrayed as two different things that affect each other.

Finally, in the last resolution which accepts the right to a healthy environment as a human right, the language used only reaffirms its resolutions in connection with the 2030 Agenda for Sustainable Development. They specifically compute that the aforementioned document provides “comprehensive, far-reaching and people-centred set of universal” (United Nations General Assembly, 2022) set of goals. Furthermore, they reiterate that the goal is to achieve sustainable development in its three dimensions, namely “economic, social and environmental” (United Nations General Assembly, 2022). As such we do not see much of a change from the already discussed narrative regarding the goals of the international community in the climate crisis.

The Right of Future Generations

The current state of environmental destruction is often seen as a result of previous generations careless abuse of natural resources, as well as the tremendous pollution caused during the period of industrialization. However, many people are also asking themselves what is our generation leaving to the people of the future? Is our generation of people actually any better? And the concept becomes even harder to grasp when one starts thinking about a period of four or 5 generations ahead. There is also the question if that should be part of current people’s ethical worries, especially since a

very big part of humanity is already suffering the tremendous effects of all areas of environmental destruction. As Menuhin (2008) states, for many the idea of justice being intergenerational is absurd and impossible, since similarly to David Hume they believe that it is almost impossible to obligate inexistent people. Still, the human rights framework, specifically dealing with environmental issues provides many good arguments as to why there is a real need to defend the rights of future generations from uninhabitable environment.

Ethically, there are also many unanswered questions like – how many future generations do we consider? And how is it possible to predict what is necessary to be done to not violate the right of people that cannot defend themselves in court? Even though all those concerns are fair and there is a need to define what this right would entail, many believe that this right is essential to be used as a motivation for currently alive humans to do more to protect nature. Maybe that is because people are inclined to imagine their own heirs living in a terror because of their current decisions.

For now, this is not a right recognized by any conventions, it is simply a rhetorical idea that is being ingrained in documents that aim to promote Sustainable Development. In a way it seems that it is used to provide an idea of a timeframe towards which the objective of the SDGs is oriented. It is useful in that way and lately it is an argument used by many activists trying to motivate others for the meaning to live sustainably. As it is, the rights of future generations as an idea provoke people to consider the need for a more sustainable development, one which would be able to continue the survival of ecosystems and conserve natural resources for longer. The concept of the right to future generations was mentioned in the first principle of the Stockholm Declaration of 1972, as mentioned above, stating that the right to a healthy environment is a responsibility of humans for current humans and humans of future generations. Afterwards, it was reaffirmed in the 1987 Bruntlant Commission Report, which is commonly known as “Our Common Future”. The report introduced the concept of sustainable development and it put an emphasis on the need to protect the environment for future generations as well. Since then, future generations are always mentioned in connection with the SDGs.

Through the lens of Environmental Ethics

Since it was first mentioned, it is often used as an argument and even as a motivational rhetoric by activists trying to convince others of the gravity of the current situation. This seems to have an emotional effect on people and to motivate them to want to make a change in the current

world. In a sense protecting future human generations is also impossible without protecting non-human generations of different species. However, the language of the Rio Declaration, for example does not manage to encompass the importance of non-human environment. Rather what it does, is that it reminds that there is a need of a certain standard for the well-being of future humans. As mentioned before, the declaration's first principle states that human beings are the center of sustainable development, as well as that they are entitled to live a life in harmony with nature.

According to the 1987 Bruntlant Commission Report sustainable development is described as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs" (WCED, 1987). It is unclear what the needs comprise of, but it is seems to be the materialistic need of natural resources, that is intended. Furthermore, it is specified that this implies that "technology and social organization can be both managed and improved to make way for a new era of economic growth" (WCED, 1987). This rhetoric is continued in the language used in the Rio Declaration, where an important aspect is to promote sustainable development. As Adami (2013) argues – the language used is more the one of economics, rather than an environmentalist one. This is not a surprising since as Dupuy & Viñuales (2018) argued the focus of the international community has been ever moving towards the language of economics, development and social needs and the mention of nature is almost symbolic. In this way, it sustains a clear ethical anthropological dialogue. One where, there is a statement of nature as a means to people's wellbeing and development. This plea for sustainable development portrays the situation of the failing ecosystems as an instrument that is being misused for its possibility to be utilized longer, so that future humans can also benefit. On top of that, there is an implication of even more economic growth. That line of thought clearly follows the paradoxical way of reasoning that surrounds the idea of sustainable development. It does not in any way discuss how the environment can be protected for future generations to benefit from it. As Kopina et al. (2018) rightly argues, it is impossible to continue maintaining economic growth, achieve social equality and ecological integrity simultaneously when the ecological limits are already exceeded, as they are. Further, the argument by Crist (2015) is brought up that economic growth is proven to be one of the most substantial reasons for biodiversity lost and unsustainability. As Adelman (2015) shows in his research, exactly neoliberalism has helped immensely normalizing "possessive individualism" and "the commodification and monetization of nature" (Adelman, 2015). As a result, it seems that the idea of

protecting the future generations is simply an empty promise, filled with ecological language that drives societies to the same habits that have caused us being in this position in the first place.

What this chapter has found is that there definitely will be many positive outcomes from the emerging rights, especially in a social aspect. Recognizing people's need of a healthy environment for them to enjoy any of their other rights was a necessary step. And one that was really overdue. However, as mentioned before – for the purpose of this research it seems to me like this is not a reliable or sufficient instrument to properly defend the environment. As such, in the next chapter this research will focus on the challenges that the Human Rights field does not seem able to overcome and it will provide possible models that could address some of the gaps.

Chapter 5: Critical Environmental Law and More Models Related to the Topic

Many ecologists criticize the human rights approach all together because of its inescapable anthropocentric position. They argue that the rights connected to environmental protection are mostly one-sided and do not focus on the responsibility of people towards the environment. The language in the treaties points towards the material need of people for the survival of nature, the humans' benefit, rather than protecting it for nature's own sake. Generally, the polarization on opinions on the topic of weather the environment deserver protection for it own sake seems to be an unbreakable barrier towards achieving any considerable change in the aggressive environmental destruction of our time.

To begin with, Adami (2013) describes of the language used in UN documents to be the one of human rights advocates, meaning that it deals with environmental issues in a human-centered way, protecting the environment solely for the interests of people. While there is no denial in the need to protect people, especially the most vulnerable ones, environmentalists more often use a language that entails protecting the environment from people. Both of those perspectives hold important arguments and none of them should be denied. However, there is a need to address the gap of legal documents that aim at directly protecting the environment. In a perfect system all of the different interests and motivations for protecting the environment would be addressed. But even without a perfect system there is an urgent need for humanity to find a way to deal with environmental issues both for their own interest, as well as for the interest of any other species on Earth. As such, there is a need for a legal system that supports multiple approaches and motivations. This chapter aims at addressing the weaknesses of the human rights system and to further provide alternative models that strive to be more dynamic and overarching in their moral consideration of nature in order to protect it.

This chapter aims firstly at addressing the difficulties of the human rights law to properly protect the environment. This argument is based on relevant examples and case-law. Then, the chapter discusses possible models that seek to tackle the issues that seem to prevent both human rights and generally the international environmental law from protecting the environment. These models include Philippopoulos-Mihalopoulos's (2017) model of 'critical environmental law', as well as a 'guardianship model' and the most prominent and developed model of 'rights of nature'. All of those have merits and propose ways in which a systematic change can be achieved, so that there is an increased variation of ways to positively impact the needs of the environment.

The challenges of Human Rights as protector for the environment

As the research of Evadne Grant (2015) shows, there are multiple issues with the amount of environmental protection that international human rights courts can provide. Besides the inescapable anthropocentrism of human rights, there are multiple other challenges that the field faces. In practical terms, these include the individualism of human rights, as well as the fact that environmental degradation often affects not a sole right, but rather all of them. So, there are issues of disconnection that the law is not managing to address.

One of the biggest issues for human rights courts to be able to properly protect the environment is the strong individualism present in the requirements of a victim. This is an issue that is often addressed outside of the scope of environmental issues as well. There are many activists and theorists that believe that the individualistic approach of human rights documents is based on a 'wester' perspective on rights. Some believe that some cultures function on a collectivist basis and that this should be recognized by the law (Feyter & Pavlakos, 2008). While this is a complex discussion on which both sides have valuable arguments, when it comes to protecting nature, it seems that the individualist approach of human rights courts poses a challenge. The issue comes from the fact that if only individuals can demand reparation for environmental damage, there is a serious limitation for prevention of environmental disasters. It is much more difficult for an individual to prove environmental damages when those usually affect whole societies; and in a more indirect way – the whole world. Furthermore, if an individual has to prove damage on their own, it is almost always way too late for a timely reaction to an environmental issue. If there is a possibility for a whole community to argue for the need of an urgent reaction towards a detrimental process in their environment it gives them a stronger argument.

A notable example for this issue is the European system. Article 34 of the ECHR states that for a case to be accepted, the applicant must be the 'victim' of the damage. That entails that the applicant must be personally affected by the violation of their rights by their country (Grant, 2015). The limitation of the Court for communal complaints lowers the possibility of an individual claimant to prove damage and to prevent a forthcoming environmental harm. There is an exception of the Court in extreme cases where the Court uses the principle of precaution for the risk of future serious infringement. However, it is unclear what a "serious infringement is" (Grant, p. 384, 2015). This is fluid concept that strongly depends on the reading of the issue. Moreover, even if it develops through

decisions of the Court, it is a slow process that would not be effective in dealing with environmental disasters, which are often unexpected and develop exponentially in a short period of time.

Another issue with the individualism of the human rights system is that it misses the severity of environmental damage, which almost certainly affects whole communities, rather than individuals (Grant, 2015). These limitations miss the wider consequences from collective environmental damage. Furthermore, in the European system cases cannot be brough by a third party like an NGO. The procedure of third parties bringing cases for the benefit for the whole of a community is called 'actio popularis'. The procedure entails that the applicant is acting in the interests of their society. While this type of application is limited from the ECtHR for practical reasons, it limits the possibility for a complaint solely to individual cases where one applicant has the burden of having to prove damage. In connection to environmental harm, this approach has been defended by the court in specific decisions on cases. The ECtHR has ruled on cases particularly on the basis of the protection of the right to private life, rather than the interest of the community as a whole.

An example is the case of Taskin v Turkey (2006) where the applicants argued that there was a violation of Article 8 of the ECHR by the Turkish government. Article 8 constitutes the right for their private and family life to be respected – and for public authorities to not interfere without an acceptable reason. In this case, the Turkish government had granted permits to a private company to develop a gold mine which uses sodium cyanide in the process. This is a harmful substance both for the environment and the locals. Historically, this is considered an important decision of the ECtHR because the Court found a violation to Article 8 even though there were no serious health issues proven by the applicant. That entails that the court asserted that environmental damage and polluting factors will cause violation of the private life of an individual. Even though the Court ruled that the right to private life is violated by harmful actions that will possibly result in serious health issues, it specifically did so solely on the basis of the rights of an individual, not based on the needs of a whole community (Taskin and Ors. v. Turkey, 2006). As Grant (2015) argues, the court is interested in the potential damage on specific individuals. Thus, a general degradation of the habitat of the whole community is not relevant or visible in from of the court.

In contrast to the European System, another regional human right system – the Inter-American Commission (IACHR) and the Inter-American Court of Human Rights (IACtHR) broadens the protection of human rights to communities. Furthermore, it acknowledges environmental concerns

without the admissibility requirement for the applicant to be a direct victim (Grant, 2015). There is still a requirement for identified victims, but the case can be brought by a third party. This extends an opportunity for organisations to bring forward cases, in which they still identify specific victims. This releases the victims from having to be the applicant and significantly expands the possibility for a larger group of victims to be identified. However, action polaris cases which care for the interest of the community, are still not admissible in Court. Only the rights of specific, identifiable humans are accepted, similarly to the ECtHR.

The case of Saramaka People v Suriname (2007) of the IACtHR is a well-known example of the collective approach present in the Inter-American system. This case is connected to the discussion between States and indigenous groups concerning the exploitation of their sacred lands. Abuse of indigenous territories, as well as pushing them out of their territories, are a constant issue that is being contested. In this case the government allowed mining and logging companies to act in the Saramaka people territory without including the group in the discussions.

The Saramaka People are one of the Maroon groups in Suriname which were African Slaves brought to the country. Eventually, they escaped into the rain forest and freed themselves and for a hundred years they have been fighting from the rainforest for their independence. Even though they live under the jurisdiction of the State of Suriname, they have their own unique governance. Their ancestral territory is part of their cultural identity. Moreover, it is an essential part of their everyday needs in terms of food, medicine, and other parts of their livelihood.

In the case Saramaka People v Suriname (2007) the Court recognised the Saramaka people as a tribal community, similar to indigenous communities of the area. As such, the court accepted the importance of their relationship to their ancestral grounds. The decision of the court pressured the State to actively consider the opinion of indigenous groups and include them in the process when making decisions concerning their territory. As such, the State does not have the right to intervene with Saramaka lands without taking into account their opinion. This decision of the Court was revolutionary in the way that it recognised and protected the collective rights of the Saramaka people. The decision was specifically important for the future protection of indigenous rights to communal property – article 21 of the ACHR (Grant, 2015). It meant that the State must change existing laws in order to accommodate the right to communal property of indigenous groups. As indigenous people were often discriminated against and regarded as unfit for owning their property

in a communal manner by previous laws of the country, the development of this case was a huge success not only for the Saramaka people, but for all indigenous and tribal groups throughout the Americas.

The decision of the court served as a basis for resolving further cases by the IACtHR. An example is the case of Kaliña and Lokono v Suriname which was similar to the extent that the communities were filling a claim about the failure of the State to recognise their right to collective property. Furthermore, the applicants also argued that the State failed to ensure effective political participation of the group prior to granting concessions concerning their grounds (article 23) (Lixinski, 2017).

The decision of the Court on this case brought the issue of collective ownership a step further. While in previous decisions the court had ruled in favour of specific members of a community, in this case it held that the entire community is entitled to reparations. Moreover, it found that indigenous groups together are entitled to recognition as a legal personality. The decision means that the Court accepts that for the full enjoyment of their rights, indigenous communities should be allowed to keep up with their customs and traditions and exercise their communal rights as a judicial personality (Lixinski, 2017). That was an unprecedented decision – usually the court would just name some representatives from the community, rather than accept a communal legal personality.

There was a backlash of the academic community for this decision because of the implications it creates for communal legal personalities. Some months after the decision, the Court ended up having to release an official statement in which they clarify that corporations are not entitled to human rights, based on a literal reading of Article 3 of the ACHR, which defends each individual to be equal before the law, as well as to be entitled to equal protection of the law (ACHR)

Lixinski (2017) takes an issue with the decision of the court. He finds the assumption that environmental law and human rights law are compatible when in connection with indigenous people is wrong. He argues that there is a strong presumption that indigenous people are living in a sustainable and nature friendly manner. He thinks that this idea limits the possibility for different identification of indigenous groups by themselves. The assumption of the identity of indigenous people as guardians of the environment narrows down their selfhood to harmoniously living with nature “noble savage” (Lixinki, 2017). He goes even further to argue that even though these groups

often utilize the perception of ‘guardians of nature’ for their own interests, it limits them to their possibilities for traditional development. That is because often as the guardians of nature they are not allowed to use their land for development in ways in which other people are allowed to under the jurisdiction of human rights law. His opinion is interesting, and it does give a different light on the issue since in present times they are often portrayed as the ‘guardians of nature’. However, it is crucial to note that indigenous organisation time and again have proved how much could be learned from their ways with nature. On top of that, they very actively fight for their right to take more space to be a part of the decision-making process for dealing with the climate crisis.

Still, even though there were these developments in the IACtHR, generally it is a standing critique of human right that their individualistic approach is uncapable of dealing with the broadness of environmental degradation.Other researchers like Hikes (2008) find the human right field too exceptional for it to be practical. The argument consists of the idea that relying on human rights to govern moral relationships is a way to exclude cultures that do not find rationality as the “defining mark of our species” (Hiskes, 2008). This is also an argument that is often made also outside of the nature discourse – human rights are generally often criticized for being too one-sided in their perception of knowledge. Similarly, Rorty believes that the ‘special nature’ of humans would be better defined as ‘feeling for each other’ more than other species. Through this ‘sentimental education’, there would be better security and sympathy than through the reliance on human rights (Hiskes, 2008). This argument somewhat makes a full circle back to the ancient ways of humans and nature to connect – a relationship fueled by respect and appreciation, rather than rules based on materiality and need.

Even though it is good that there is attention given to environmental issues from the human rights framework and that is a very important step to be made for the achieving of environmental justice for all humans, it is also of utmost urgence to still be critical and to further broaden the moral spectrum that the existing international instruments for protecting the environment. Especially since that development in the field will arguably be beneficial for every living creature on the planet earth including people. For that reason, the next section of this chapter is devoted to alternative models

Critical Environmental Law

Considering the flaws of our current legal system, the continuously growing post-humanistic approach argues for a “law beyond human” (Harvey & Vanderheiden, 2021). This is a way to

recognize the subjectivity of nature, which as shown, has been denied in the current international environmental law thought objectification of all nature that isn't human.

As Philippopoulos-Mihalopoulos (2017) argues there is need for environmental law to take an active role in the environmental crisis, rather than to reduce itself to "a reactive, ponderous and disciplinary confined position" (p. 131). He argues that environmental law is more than a sum of its human parts and that it can be an actual 'agent' in the matter. But for that to happen, there is a need for the system to get away from its modernist, humanist traditions. The aim of critical environmental law is to place traditional environmental law "into a new space where traditional conceptualisations of disciplines, actors and jurisdictions are re-determined in the face of the collapse of such steadfast distinctions as those between human and nonhuman, body and environment, subject and object, observation and participation, and epistemology and ontology." (Philippopoulos-Mihalopoulos, 2017). So, rather than continuing to support neoliberal economic agendas and more technology and constant development-oriented approaches, he argues that there is a need to change the language of the field. After all, environmental law is in its basis a linguistic structure which is also expressed in its material manifestation. In the case of international environmental law, it is rooted in the material connection between human and nature and then expressed through a linguistic manifestation (Philippopoulos-Mihalopoulos, 2017). He argues that there is need from IEL to move from a simple problem-solving machine to system with more depth that manages to distance itself from humanity and try to have a more objective picture. It needs to go beyond its "epistemic closure" (p.135) and consider other disciplines and their manifestations. This is important because while IEL is already interdisciplinary, Philippopoulos-Mihalopoulos (2017) argues that its interdisciplinarity is instrumentalized and it does not manage to go further than the needs of the law. Rather it needs to "adopt an interdisciplinary approach that escapes the narrow instrumentalism of decision-making and extend this on a supra-disciplinary horizon of long-term futurity" (Philippopoulos-Mihalopoulos, 2017, p. 135). The concept of critical environmental law is an extremely complex one that deserves a whole thesis on itself. This paper does not have the scope to address it fully, but the general conception is that the law needs to open up, instead of close down. This would allow it to become a more adaptive and dynamic system that can respond to the actual compound nature of environmental changes and needs. The idea of Philippopoulos-Mihalopoulos (2017) is revolutionary, and it can completely change the field.

Guardianship of Nature

Situating people within nature has always been part of indigenous ontologies (Harvey & Vanderheiden, 2021). One of the arguments is that nature communicates its needs and there are ways for people to understand those by observing and considering the signs. The same way that a person can tell if a plant is drying out or it has been overwatered. However, when people live closely to their environment, they develop a certain sensitivity to smaller and smaller changes. That is why there is a relevant argument that Indigenous groups, because of their proximity to ecosystems become able to observe changes that would be considered nearly impossible to identify in another way (Pierotti & Fogg, 2020). These ontologies help consider the importance of non-human nature and it's needs in the 'human-made' systems in place. This way the separation of human and non-human nature is being blurred out.

As such, there is an argument for a guardianship model, similar to those where Indigenous groups are collaborating with organizations in order to conserve specific ecosystems. This model has been proven to be extremely effective. Multiple examples are provided by Chicchón (2009) where this has been the strategy to protect biodiversity, while at the same time protecting the rights and authenticity of indigenous peoples. In Latin America, there are already some vastly different approaches to these partnerships, however generally the common ground is the need of indigenous groups to protect their ecosystem in order to achieve an adequate standard of living and access to resources, as well as the more western concept of conservation, and the way those two coincide (Chicchón, 2009). A successful example is the case of the Guarani's partnership with WCS to negotiate on how to build the Bolivia-Brazil pipeline, while ensuring environmental and socioeconomic impacts are mitigated. In this case there was an agreement met, which insured that the pipeline would pass through areas in which it would cause the least environmental damage (Chicchón, 2009).

While this approach of guardianship is being challenged, since it implies that one group of people is responsible for the communication to an ecosystem, which could be corrupted and used outside of the goal of conservation, I think the more important point that can be learned here is the need for more sensibility and understanding towards the subjectivity of nature and the need to consider its interests. This is a way to consider the dignity of nature, similarly to that of human dignity. And for there to be space for those ethics to be part of the conversation, there is a need for a wider range of

people being allowed to take part in the discussions. However, not just a listening part, but a more active role that is allowed to be respected and listened to.

For that reason, an important recent event, the UN Climate Change Conference (COP26) was disappointing for many activists and the general public. The Conference of the Parties (COP) are series of climate summits that aim to bring together world leaders and to negotiate the next steps in the fight against climate change. The 26th annual summit that took place in 2021 was named COP26 and it was held in Glasgow. It brought together "120 world leaders and over 40,000 registered participants, including 22,274 party delegates, 14.124 observers and 3.886 media representatives" (United Nations, 2021). The United Nations' webpage confirms that the results of the meeting are to recognize the emergency, accelerate action, moving away from fossil fuels etc. (United Nations, 2021). However, not only do those decisions seem outdated and vague, but also once again the non-governmental participants felt pushed to the outskirts of the negotiations and had no decisive power whatsoever. The Indigenous peoples' representatives were the second-largest civil society delegation, only after the oil and gas lobbyists (Cultural Survival, 2021). Even though that is an accomplishment in itself, they did not take an active part in the negotiations which were carried out by States and corporations, while the indigenous peoples' organizations were not seated on the table.

Rights of Nature

A possible solution to many of the concerning issues of current environmental law addressed in this research is the proposition that there is a legal recognition of rights of natural systems. Generally addressed as Rights of Nature (RoN), the belief is that in the same way as humans, all parts of nature should be recognized as subjects that need to be recognized in front of the law. That entails those natural ecosystems are legal subjects with inherent rights. Similarly, to people, those should be protected because of an inherent value. Furthermore, since people are responsible for the untimely destruction of nature, they should have a responsibility to now protect it. While until recently this was a wild suggestion that was widely unaccepted as an idesa, Kauffman & Martin (2021) show that by January 2021 there were 178 legal provisions – constitutions, laws and court rulings, based in seventeen countries that recognize rights of nature. Simultaneously, there are thirty-seven pending provisions in ten other countries. This shows a global interest to extend the traditionally anthropocentric rights to a much wider group that deserves moral consideration.

While traditional Western law is built in a way which it does not consider humans equal to other species, biology, physics and chemistry show that humans are, in fact, animals. According to Kauffman and Martin (2021) this is a sign that the law is not managing to develop as fast as scientific advancements. As mentioned before, the current international law is adapted solely to the conception of nature as a machine that needs to be exploited. It does not consider the value of nature or the sacred relationship of humans to it. Scientists now understand that the Earth is not simply made of disconnected parts that are independent, it is rather a huge system that relies on all of its components, which are in a constant connection. Thus, all ecosystems are dependent on one another in ways which are not entirely clear to people. Each change in an ecosystem affects other systems and the species present there in ways which are so complex, that it is impossible to calculate in time. In those terms, it is understood that nature does not sustain itself in an extractive manner, but rather in a generative one (Kauffman & Martin, 2021). Boyd (2017) argues that the idea that humans can take advantage of the natural resources as they see fit is built on the idea that humans are in some way more valuable than other species. This idea contributes to the perception that the environment is there simply for the development of people. When these views are fueled by the goal of a constant economic development it leads to the definite destruction of all ecosystems that are governed by people (Boyd, 2017). As such, the supporters of the idea of Rights of Nature believe in the need for legal systems to develop in a way that considers the world as a "communion of subjects" (Kauffman & Martin, 2021), rather than a "collection of objects" (Kauffman & Martin, 2021). The change that the supporter of this system fight for is the radical paradigm shift of the current prevailing ethics in international environmental law. The shift is from utilitarian, anthropocentric and instrumentalist considerations of nature in which every piece of land is considered a human property, towards a more objective view of nature in which there is an understanding of the impossibility of limitless growth when there are limited natural resources.

While until recently the only land not owned by humans was Antarctica and Bir Tawil, now it is already a reality that this trend is changing (Boyd, 2017). The pioneer to giving a natural system legal standing is New Zealand in 2012. A treaty agreement between the government and the indigenous group Maori was settled that recognizes the legal rights first of a river, and later to a national park. As Boyd (2017) asserts, this is a revolutionary progress that allows Maori worldview into the national legal system of New Zealand. He also rightfully inserts that the Maori beliefs are

unique to their own culture, nevertheless they share some of the same convictions about the relationship between people and nature, which are contrary to the prevailing Western ones.

There are two important Maori views that specifically differ from the Western view about the connection to nature – the ideas of kinship and stewardship (Boyd, 2017). The idea of kinship is overarching from human relations to all living, deceased humans, as well as all parts of the environment, like water, land, fauna and flora and the spiritual world. Therefore, according to the Maori, "all the elements of nature are kin" (Boyd, 2017, p. 133). What can be understood from this line of thought is also that subsequently humans and environmental elements all have equal importance in the wider picture of the world. Boyd continues to make an extremely valuable comparison between the Wester legal system and the Maori system. Namely, that the way that rights and responsibilities are essential to the healthy relationships of humans, in the Maori worldview this is extended further to the relationship with nature.

This chapter has two big objectives: the first is to expand on the biggest challenges that the human rights field faces in protecting the environment; the second is to provide alternative models that can fill the gaps. The chapter found that the nature of human rights law prevents it often from providing proper protection of nature. It also found that there are models that aim to broaden the understanding of the possibilities for defense of nature. It specifically focuses on the ideas of 'critical environmental law', 'guardianship of nature' and 'rights of nature'.

Discussion and Conclusion

As it is mentioned in the beginning of this work, ethics are always-present in all parts of social constructs and culture – law, language, beliefs. Whether the ethical basis of an argument is straightforward and clear or disguised behind diplomatic twists, it is still there and it is important for the intention and actions and beliefs of the arguer. As it is mentioned in the beginning - people that have a larger circle of moral consideration tend to also be more active when it comes to environmental protection.

The question which the thesis was investigating was whether the present ethics in the most prominent international instruments for natural protection can be clearly identified and bettered by expanding our moral considerations. As such, this thesis is conducting an ethical analysis of our current international systems in place for protecting the environment. Furthermore, it is asking if those really aim at stopping the continuous degradation of nature by pollution, loss of biodiversity, climate change, deforestation and the endless list of environmental issues, and if so – how can the legal instruments reflect better a more diverse set of environmental ethics, which are strongly defended in academia and socially.

Generally, through the analysis this thesis found that even though there are many different ethical positions that people defend, it strongly depends on the cultural perception and interests. However, it seems like most of the current international legal instruments are often conceptualized as too anthropocentric, instrumentalist by critics. This also entails that they are too focused on economic gain, political interest and not enough on the environment itself. Even though it was not specifically intended, the research focused a lot on language and found that the current legal language used in international environmental treaties is mostly one that serves economic interests by objectifying nature to a point where it is only considered valuable if there is a human interest in line. This anthropocentric language is also strongly criticised throughout the research.

Still, the findings from the second chapter show that having an anthropocentric point of view is not always negative, in fact it is argued that it is sometimes inevitable as DeLapp (2011) clearly acknowledges. This is connected to the fact that humans could never completely dissociate from their humanness. In many cases from an anthropocentric view many lives can be saved, and that could

also be beneficial for the environment. That is seen in the fourth chapter when the human rights framework is being used as a tool to protect both the most vulnerable people and nature. While environmental justice is of the most importance, that chapter displayed the weaknesses of trying to protect the environment with strictly human-centred instruments. Even if it will have a beneficial effect on nature, it simply seems like it cannot be enough. This is also what is observed in the fifth chapter, since we observe that the human rights Courts' aim is to protect people – they are not willing and able to defend nature currently. While at the same, the aim of international environmental law is more to act as a problem-solver that acts as a scale that has to constantly rotate between environmental protection and exploitation of natural resources.

As such, there is a need for a more dynamic system that allows more tools and motivations for the protection of the environment. There is a need for more ecocentric representations and motivations, there is a need for more understanding of nature's intrinsic value. Furthermore, the findings show that maybe there is a need for de-centralizing environmental ethics and finding a system that can reflect more on many different worldviews, which in our polarized times seems essential for moving forward and cooperation on this life-threatening issue. There are three alternative models that are presented and considered.

This thesis is built on extensive research that shows that there are so many valuable works done on this topic of environmental ethics – some completely revolutionary for their time, others complementary or giving a slightly different angle. The diversity and multiplicity of opinions and visions for a change in our current legal systems is what inspired this specific work to consider the need for this diversity in the system itself. Some ethical theories have anthropocentric motivations, others ecocentric and then there are some that go beyond these binary conceptualizations – but there are fair and valuable considerations in all of them. However, no one-sided approach will ever be enough to create real substantial change before it is too late. As such, there is also a necessity to acknowledge the urgency of the matter as a start.

The results of this research largely agree with the general opinion with this field that there is a need for recognition that only considering human needs is not enough on multiple levels. On the material level – because at this point environmental degradation is happening at a rate that is beyond the obvious human needs. On the cultural level – because even though it is not always recognized in legal instruments – many people believe in the intrinsic value of nature and feel an inner

responsibility towards the life of non-human species. And this altruistic motivation is strong, because respect, empathy and love create the necessary change from withing that makes the necessary change in everyday life not simply an obligation, but an inner duty. For some this is a spiritual belief, for others simply an ontological understanding of the world, but these views should be respected and supported more in the international legal system. Practically, that will create a massive change in the dialogue, and it might increase the participation and trust in international organizations like the United Nations, which carry much responsibility for the protection both of human rights and the environment. As such a possible improvement is undoubtedly the concept of Rights of Nature, which will create legal space for defending the interests of nature. It is a concept that has many merits and some national legislations are trying to implement it, which in my opinion also shows a global move in a right direction – a direction of care and respect for non-human entities. The model that aims at guardianship of nature has in my view similar intentions even though it is more focused on analyzing and understanding the needs of an ecosystem in order to protect it. I find that it is also a model with many merits, but the critics definitely pose important questions like how you would trust the guardian to not take advantage of their position, or how will they move away from their own human interests. Those questions can be acknowledged in furthermore detailed research on the model.

In line with the hypothesis of the research, I found that a large portion of the environmental ethical studies come to a conclusion for need of multi-ethical future of environmental law. Nolt (2014), Kopnina (2015), Washington (2015) (2017), Taylor, B. (2015) and others all seem to agree that there is a need of more than one ethical theory present in the representation of nature. My findings corelate to that conclusion. What I find valuable in system propositions like Critical Environmental Law proposed by Philippopoulos-Mihalopoulos (2017); Harvey and Vanderheiden (2021); De Lucia (2017) is that they open up the discussion and want to make international law more flexible and adaptable – qualities that can only improve the global response to a series of environmental disasters. Neither one ethical theory seems to be good enough on its own, as shown both the anthropocentric and the ecocentric systems have intrinsic flaws and contradictions in themselves. And it is to be kept in mind, that in this research it is discussed the general conception of these theories. In reality, they are both extremely rich in themselves of opinions that often do not match each other. If it is hard from people to agree if they support very similar ideas, then I do not believe that it is possible to convince the currently polarized world to believe in a single theory. As such, we need a system that can be as wide and adaptive as possible.

There is also need for real cooperation, which would entail including as many voices as possible – giving space to people to be proactive and involved. Practically, there are already many initiatives trying to broaden up the spectrum of voices being heard like the 1982 “World Charter for Nature” or the current efforts of indigenous organizations to speak out and spread information through their active participation on UN Climate Change Conference (COP26) or the creation of the Local Biodiversity Outlooks. However, as Cariño et Ferarri (2021) discussed, in the current system those efforts are often being fiercely silenced. I think this is yet another symptom of protection of economic interests and growth at any rate.

And while it is beyond the scope of the study to argue for the exact practical methods of changing the system for it to be more perceptive – this could be future research which would analyze specific ways to develop the legal system. Especially in connection with critical environmental law, there seems to be a valuable research opportunity in considering the practical application of the matter.

As expected, this research found that environmental ethics can be beneficial for the understanding of the international legal systems that aim to protect the environment. It further concludes that while there are many positive aspects of our current systems, it seems like they urgently need to be improved if we want to achieve a change big enough to slow down the unforgiving environmental degradation. There is hope and I find that this hope is in the people – there is a need for knowledge, participation and cooperation. This research shows that it matters if people care or understand the legal language that can sometimes feel distant to a normal person. It is important that governments are held accountable. It is also important that the number of voices that are being heard increases tremendously. As we have seen, there is much to be learned from one another and from nature itself.

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